

QUESTIONS
AND
ANSWERS
ABOUT
DIVORCE

A FREE INFO KIT

PROVIDED COURTESY OF:

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Frequently Asked Questions

Divorce In Ohio

1. How may a marriage be terminated or ended in Ohio?

In Ohio, the only way a marriage can be terminated is through court actions of divorce, dissolution, annulment, the death of one of the parties or by a judicially determined presumption of death (at common law a presumption of death requires an unexplained continuous absence from the home for a full seven years).

2. What is the difference between "divorce," "dissolution," and "annulment"?

A "divorce" is the legal termination of the marital relationship by the judgment of a court which may only be granted by the court determining that certain "grounds" for divorce exist. A divorce legally ends the marriage.

A "dissolution" of marriage is a kind of termination of the marriage relationship without fault where the parties have agreed upon all of the terms to end the marriage (including determining separate property, dividing marital property, providing spousal support, allocating parental rights and responsibilities, child support, etc.) and request the court to "dissolve" the marriage and approve the Separation Agreement between the parties. The basic advantages of a dissolution are: that it is not adversarial in nature (i.e. there are no contesting parties of the "plaintiff" or "defendant"); the parties have already fully agreed about everything to end the marriage; it is not a "divorce"; and the court does not make any decisions it would have to make as in a contested divorce. Also, it is usually faster than a divorce proceeding.

An "annulment" is a judgment from a court that the marriage is legally invalid because of some defect that existed at the time the marriage was entered into. A Decree of Annulment determines that a marriage never legally existed, unlike a

Decree of Divorce that ends a marriage. Grounds for Annulment include: an underage marriage; bigamy (i.e. one of the parties has another spouse still living); mental incompetence of one of the parties; fraud; duress and not consummating the marriage (which may include impotency).

3. What is necessary in order to obtain a divorce in Ohio?

In Ohio, in order to grant a divorce, the trial court must find:

- **that the plaintiff (the person filing the divorce complaint) has been a resident of the State of Ohio for at least 6 months immediately prior to the filing of the complaint and a resident of the county in which the divorce has been filed for at least 90 days or that the plaintiff for at least 6 months immediately prior to the filing of the complaint and that the defendant spouse has been a resident of the county in which the divorce has been filed for at least 90 days; and**
- **that "grounds" (a legal basis) for granting a divorce exist.**

4. What are "grounds" or legal reasons for divorce in Ohio?

Ohio law permits the granting of a divorce only upon a finding by the court that there are statutory grounds to terminate the marriage. There must be testimony by the plaintiff and a corroborating witness (or an admission by the other spouse) as to these specific grounds.

Ohio has both "no-fault" and "fault" grounds for divorce. The "no-fault" grounds include "incompatibility" and "living separate and apart without cohabitation for one year."

There are nine "fault" grounds in Ohio. These "fault" grounds are:

- 1. Another spouse living at the time of marriage (bigamy);**
- 2. Willful absence of a party from the marital home for one year;**
- 3. Adultery;**
- 4. Extreme cruelty (defined as "acts conduct calculated to destroy the peace of mind and happiness of one of the parties to the marriage");**

5. **Fraudulent contract (i.e. a party was induced to enter the marriage as a result of a fraudulent representation that materially affects the essential elements of the marriage;**
6. **Gross neglect of duty (i.e. acts that constitute an omission to perform a legal duty, such as a failure to support the family);**
7. **Habitual drunkenness;**
8. **Imprisonment of the adverse party in a state or federal institution at the time of the filing of the complaint; and**
9. **An out-of-state divorce.**

5. How is a divorce case started in Ohio?

A divorce case is started by the filing of a “complaint.” The person who files the complaint is called the “plaintiff.” The other party is called the “defendant.” The complaint must state that the plaintiff has resided in the State of Ohio for the mandatory period of time (6 months) immediately before the filing of the complaint; must state the date and place of marriage along with the name and birth dates of any minor children; there must be an allegation of at least one of the statutory grounds for divorce, and; it must contain a demand for the relief being requested of the court.

“Service” of the complaint must be made on the defendant in order to bring him or her within the jurisdiction of the court. There are several methods of service that can be made even if the defendant spouse lives in a state other than Ohio.

The defendant must then file an “answer” to the complaint, admitting or denying the allegations in the complaint. If the defendant denies the allegations he/she may also raise any defenses he/she has. Also, the defendant may file a “counterclaim” asserting any claim he/she has against the plaintiff spouse for divorce or for a “legal separation.”

If the defendant files a counterclaim, the plaintiff must file a “reply,” either admitting or denying the allegations made in the counterclaim and raising any defenses that the plaintiff has.

6. What if the defendant spouse cannot be located or evades service of the complaint?

Where the present residence of the defendant is not known, “constructive” service may be made on him/her by publication. Service by publication permits the court to start the case and rule on the legal status of the marriage and the marital property located within the state. Unless the defendant has been personally served or has voluntarily entered an appearance in the case, however, the court cannot rule on property outside the state and cannot make a ruling on spousal support .

7. What if the defendant is served with the complaint but does not file an answer or otherwise make an appearance in the case?

The court rules in Ohio don’t allow the granting of a default judgment in a divorce case. However, where the defendant has been served personally but has failed to file an answer or otherwise appear, the plaintiff must present enough evidence to establish a prima facie case to allow the court to grant the divorce and make a division of property, allocate parental rights and responsibilities regarding the children and issue any orders for child and spousal support.

8. What happens after the filing of the complaint and answer/counterclaim?

While a divorce case is pending, either party can request temporary orders for child support, spousal support (alimony), parental rights and responsibilities (commonly referred to as temporary custody or visitation rights), and any other appropriate temporary order, such as a temporary restraining order restraining one or both spouses from removing the children from the jurisdiction of the court, restraining one or both spouses from harassing, threatening or physically abusing the other or from disposing of property.

Also, during this time the parties can ask the court to order psychological or psychiatric evaluations of the parties and/or the children to help the court in making decisions concerning parental rights and responsibilities for the children. Home studies can be requested to assist the court in evaluating the living conditions of the parties and how those conditions may

affect the children. Discovery tools, such as depositions and interrogatories, can be used to help the parties find out what assets are involved in the case, what plans the parties have for the children and any other relevant matters. Experts may be retained to appraise property and businesses.

The court will probably hold one or more pretrial conferences during the divorce to see if a mutually agreeable settlement of the case is possible and, if not, what issues will need to be decided at trial. If the case cannot be resolved, the court will set dates for the conclusion of the discovery procedure, for production of expert reports and evaluations and for the date of the trial or final hearing.

9. How can the children's best interests be protected?

A "guardian ad litem" (GAL) can be appointed by the court at the request of either party or upon the court's own motion to represent the interests of the minor children of the parties. The GAL is usually an attorney familiar with domestic relations law and his/her job is to act on behalf of and in the best interests of the children. The parties will generally be required share the cost of the GAL fees based upon their ability to pay. The GAL will be asked to make recommendations to the court and will have considerable influence when it comes time for the court to make decisions concerning the children.

10. Is there a right to a jury trial in a divorce case?

Not in Ohio. Ohio does not permit jury trials in divorce cases. If the case goes to trial, the judge will make the final determinations.

11. What are the major legal issues in a divorce case?

Generally, the major issues in divorce cases are: the grounds for the divorce itself, parental rights and responsibilities (commonly known as custody, child support, visitation), spousal support (commonly called alimony), the determination of separate property and the division of the marital property and debts of the parties.

12. How does the judge make a final decision?

Both parties will provide the judge with information and documentation regarding all of the issues relevant to the case.

The court will have any of the various expert reports that may have been ordered while the case has been going on. The court will hold hearings and a trial where the parties present witnesses, including expert testimony and any other evidence that is properly admitted at the time of trial. The judge will also consider the recommendations of the guardian ad litem, if one has been appointed. The judge may interview the children if requested or if he/she feels it would be beneficial to do so. The judge is then required to make a decision called a "Judgment" that contains findings of fact and conclusions of law based upon the evidence presented and the applicable law. While the judge has some discretion in finding the facts and applying the law, he/she must still comply with the law.

13. What if I'm not happy with the final decision of the judge?

A party who is not satisfied with the final decision or believes the trial judge has made an error of law has a right to appeal the decision to the Court of Appeals. Appeals can be expensive (\$10,000.00 - \$15,000.00 is not uncommon) and there is no guaranty that an appeal will be successful. Generally, the only matters that can be appealed are that the judge has abused his/her discretion or that the judge has misapplied the law in making the final determination. An appeal is not a new trial of the facts of the case. It is a completely different type of proceeding and it deals strictly with the law. No witnesses or evidence are presented. An appeal is based solely on the proceedings conducted in the trial court and whether or not substantial justice was done.

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Frequently Asked Questions

Dissolution Of Marriage In Ohio

1. What is a Dissolution of Marriage?

A Dissolution of Marriage is a “no-fault” proceeding to dissolve and end the marriage which is not adversarial. Rather than having a “Plaintiff” and a “Defendant” as in a Divorce, the parties as “Petitioners” file a joint petition with the Court, asking the Court to approve the Separation Agreement that they have freely signed, which has fully addressed all important matters such as property division, payment of marital debt, allocation of parental rights and responsibilities, etc., and requesting the Court to terminate the marriage. All of issues must be resolved and fully agreed upon by both parties or the Dissolution of Marriage cannot be obtained.

2. What are the benefits of a Dissolution of Marriage?

The Dissolution of Marriage provides the same legal result as a divorce which ends the marital relationship. The advantages of a Dissolution are that it avoids conflict and confrontation of a contested divorce, is usually much faster, a lot less expensive and reasonable certainty of the final result.

3. What are the requirements to file a Dissolution Petition?

The filing requirements for a Dissolution Petition are: that at least one of the parties must have been a resident of the State of Ohio for at least 6 months immediately before to the filing of the petition. The petition must be filed in a Court of proper venue, usually the county where one or the other party has lived for the last 90 days.

4. What is the process for a Dissolution of Marriage?

Before filing a Dissolution Petition, the parties must execute a Separation Agreement that provides for the division of all real and personal property; determines the issue of spousal support

(i.e. whether there will be spousal support paid by one spouse to the other; if so, how much and for how long); if minor children are involved, it must make provisions for the allocation of parental rights and responsibilities, child support, visitation and companionship and the resolution of all other issues pertaining to the marriage that are appropriate for a Separation Agreement. Both parties must voluntarily enter the Separation Agreement after a full and complete financial disclosure of all assets and liabilities to each other.

The Separation Agreement must be attached to the Dissolution Petition, which must be signed by both parties and filed with the Court. Service of process must be made on both parties but is usually achieved by the parties signing a “Waiver of Service” attached to the petition.

After the petition is filed, the Court sets a hearing date. The hearing date must be not less than 30 days nor more than 90 days after the filing of the petition. At the time of the hearing both parties must be present in court. The testimony of the parties must satisfy the judge that they entered into the Separation Agreement freely and voluntarily; that they are satisfied with the terms of the agreement; that the agreement is fair and equitable; and that the parties still want to end their marriage by means of dissolution. If the judge so determines, a Judgment Entry and Decree of Dissolution will be entered that incorporates the provisions of the Separation Agreement, makes the separation agreement an order of the court and terminates the marriage.